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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/545,769	04/10/2000	William J Beyda	OOP7572US	2711

7590

06/03/2004

Siemens Corporation  
Intellectual Property Department  
186 Wood Avenue South  
Iselin, NJ 08830

EXAMINER

HOM, SHICK C

ART UNIT

PAPER NUMBER

2666

DATE MAILED: 06/03/2004

12

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/545,769

Applicant(s)

BEYDA ET AL.

Examiner

Shick C Hom

Art Unit

2666

– The MAILING DATE of this communication appears on the cover sheet with the correspondence address –  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 26 February 2004 and 03 May 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3, 6-8 and 11-17 is/are rejected.
- 7) ☒ Claim(s) 4-5, 9-10 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

Art Unit: 2666

**DETAILED ACTION**

***Response to Arguments***

1. Applicant's arguments with respect to claims 1-17 have been considered but are moot in view of the new ground(s) of rejection.

***Claim Objections***

2. Claims 2-5, 7-10, 13-14, and 16-17 are objected to because of the following informalities: In claims 2-5 and 7-10 line 1 delete "A telecommunications" and insert ---The telecommunications---. In claims 13-14 line 1 delete "A method" and insert ---The method---. In claims 16-17 line 1 delete "A system" and insert ---The system---. Appropriate correction is required.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the

Art Unit: 2666

art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary.

Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

5. Claims 1-3, 6-8, and 11-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Colley et al. (6,650,644) in view of Ors et al. (6,731,639).

Regarding claims 1, 6, and 11:

Colley et al. disclose the system and method comprising: intercepting a second byte from an Internet Protocol header from an IP layer; identifying from said second byte a quality of service required for individual calls (see col. 6 lines 1-30 which recite using the two QoS bytes of the IP header of the

Art Unit: 2666

data packet clearly anticipate intercepting the byte from the IP header identifying the QoS); and generating corresponding Quality of Service commands to a Quality of Service layer to define a Quality of Service at an layer (see col. 7 line 1 to col. 10 line 10 which recite translating the QoS including the step of generating the QoS lookup table for outputting the type of service TOS according to the translation entry clearly reads on generating corresponding QoS commands as now claimed).

Regarding claims 12 and 15:

Colley et al. disclose the system and method comprising: beginning an IP multimedia call (see col. 3 lines 16-22 which recite the inbound IP packet clearly reads on beginning an IP multimedia call); encapsulating corresponding messages for said IP multimedia call in IP protocol data packets; setting a second byte of an IP header at an IP layer for said IP protocol data packets; reading said second byte before said IP protocol data packets are sent over a network (see col. 6 lines 1-30 which recite using the two QoS bytes of the IP header of the data packet clearly anticipate intercepting the byte from the IP header identifying the QoS); accessing a lookup table, said lookup table containing entries for mapping said second byte to QoS quality of service commands; sending said QoS quality of service commands to a QoS layer; and sending said IP protocol

Art Unit: 2666

data packets over a network using a quality of service as specified in said QoS quality of service commands at a layer (see col. 7 line 1 to col. 10 line 10 which recite translating the QoS including the step of generating the QoS lookup table for outputting the type of service TOS according to the translation entry clearly reads on accessing a lookup table and generating corresponding QoS commands as now claimed).

Regarding claims 2, 7, 13, 16:

Colley et al. disclose said second byte comprising a Type of Service byte (see col. 2 lines 3-11).

Regarding claims 3, 8, 14, 17:

Colley et al. disclose said second byte comprising a Differentiated Service byte (see col. 1 lines 44-55).

For claims 1, 6, 11, 12, and 15, Colley et al. disclose all the subject matter of the claimed invention with the exception of the QoS layer defining an QoS at a layer being the QoS Ethernet layer and defining an Ethernet QoS at an Ethernet layer.

Ors et al. from the same or similar fields of endeavor teach that it is known to provide the QoS layer defining an QoS at a layer being the QoS Ethernet layer and defining an Ethernet QoS at an Ethernet layer (see col. 8 line 35 to col. 9 line 43 which recite encapsulating the IP packet generated by IP

Art Unit: 2666

packet assembly unit into an Ethernet packet including the label for QoS requirement using Ethernet encapsulation). Thus, it would have been obvious to the person having ordinary skill in the art at the time the invention was made to provide the QoS layer defining an QoS at a layer being the QoS Ethernet layer and defining an Ethernet QoS at an Ethernet layer as taught by Ors et al. in the system and method of Colley et al. The QoS layer defining an QoS at a layer being the QoS Ethernet layer can be implemented by using the Ethernet local area network LAN standard of Ors et al. in the system and method of Colley et al. The motivation for using the QoS layer defining an QoS at a layer being the QoS Ethernet layer as taught by Ors et al. in the method of Colley et al. being that it provides a more useful design because it uses a well known local area network LAN standard, i.e. Ethernet, in the system and method of Colley et al.

***Allowable Subject Matter***

6. Claims 4-5 and 9-10 would be allowable if rewritten to overcome the objections set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Art Unit: 2666

**Conclusion**

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Lemaire et al. disclose a quality of service control mechanism and apparatus.

Chuah discloses providing quality of service in layer two tunneling protocol networks.

8. Any response to this nonfinal action should be mailed to:

Commissioner of Patents and Trademarks  
Washington, D.C. 20231

or faxed to:

(703) 872-9306, (for Technology Center 2600 only)

Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal Drive, Arlington, VA., Sixth Floor (2600 Receptionist at (703) 305-4750).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shick Hom



Art Unit: 2666

whose telephone number is (703) 305-4742. The examiner's regular work schedule is Monday to Friday from 8:00 am to 5:30 pm EST and out of office on alternate Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Seema Rao, can be reached at (703) 308-5463.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Technology Center 2600 Customer Service Office whose telephone number is (703) 306-0377.

SH

May 25, 2004

  
DANSTON  
PRIMARY EXAMINER